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Medical Practitioners Tribunal Service
Seventh floor, St James's Buildings
79 Oxford Street
Manchester M1 6FQ

To: Fitness to Practise Panel Panellists
Legal Assessors

Tel: 0161 923 6263

Fax: 0161 240 7199

Email: enquiries@mpts-uk.org

Copy: Interim Orders Panel Panellists
Panel Secretaries
Medical Defence Organisations
Employer Liaison Advisers

Parchure v The General Medical Council [2015] EWHC 2850 (Admin)

Abstract

An appeal was brought pursuant to section 40 of the Medical Act 1983 against the order of the Fitness to Practise Panel ('the Panel') to suspend Dr Parchure from practice for a period of 6 months. Mr Justice Collins dismissed the appeal, opining that the Panel was entitled to make the findings it did on the basis of the evidence.

Background

Dr Parchure worked in the NHS as a consultant cardiologist; he also undertook private work. During a GMC investigation in 2010, the Trust disclosed that an investigation had been commenced (no disciplinary action was taken due to delays and deficiencies in the investigation) into allegations that Dr Parchure was being dishonest by undertaking private work during his NHS hours for which he did not have proper authorisation; it was also alleged that he had attempted to persuade a fellow doctor to support his account.

Dr Parchure contended that it was known that he conducted private work and had authorisation to do so. The material obtained as part of the Trust investigation was sent to the GMC, including evidence of what was said in specific meetings. It was accepted that Dr Parchure had not defrauded the NHS as he had always worked the required hours, often exceeding those hours. The Panel was not impressed by Dr Parchure's evidence and found him to be evasive during cross-examination, not addressing questions asked of him. It was noted that, when giving evidence, he raised for the first time that his line manager

had authorised him to undertake the private work. The Panel found that Dr Parchure was not a credible witness.

Appeal

Dr Parchure challenged the findings of fact made by the Panel.

Collins J set out the principles governing cases where a challenge is made to such findings (paras 6-9). It was noted that the Panel *'...has obviously considerable expertise in setting the appropriate standards assisted by the GMC's Indicative Sanctions Guidance. The test to be applied by this court is to decide whether the decision of the [Panel] was wrong'*. In citing Laws LJ in *Raschid and Fatnani v GMC [2007] 1 WLR 1460*, where it was said that on appeal judgment must be *'distinctly and firmly a secondary judgment'*, Collins J said *'those observations are not generally speaking directly applicable to findings of fact'*.

Collins J summarised the restatement of established principles set out by Sir Stephen Silber in *Oluwashegun v GMC [2015] EWHC 2146 (Admin)* (para 9):

- (i) An appeal judge...must be persuaded that a finding of fact was against the evidence because it *'exceeded the generous ambit within which reasonable disagreement about the conclusions to be drawn from the evidence is possible'*.
- (ii) If the challenge is to the finding of a primary fact, particularly founded upon an assessment of the credibility of witnesses, then it will be a hard task to overthrow.
- (iii) *'It is very well established that findings of primary fact particularly if founded upon an assessment of the credibility of witnesses are virtually unassailable'*.

It was held that due to being evasive in cross-examination, having prevaricated and obfuscated to answers which didn't answer the question being asked, combined with the fact that assertions were being raised in evidence for the first time *'it is...not at all surprising that the [Panel] found [Dr Parchure] not to have been a credible witness'* (para 31).

In rejecting the assertion that dishonesty was not properly established, Collins J noted that *'...he chose to deny what he had said in an attempt to excuse himself at the time. His denials were considered to be dishonest. That dishonesty was compounded by his lies in the hearing'* (para 40).

In dismissing the appeal, Collins J held that if the Panel *'...was entitled to find the appellant to have been dishonest, members of the professions would consider dishonesty*

in statements [whether to the Trust or to the Panel] to be contrary to what was to be expected from a member of the profession' (para 42).

Key Points

- Restatement of principles applicable to an appeal on findings – paras 6-9
- Contemporaneous records are important to support witnesses who are giving evidence of what was said when there has been a delay; in this matter, evidence was being given of what was said over 6 years ago – para 21 and 32
- Dishonesty is capable of being founded on denials, which was compounded by lies at the hearing – para 40
- Dishonesty in statements is contrary to what was to be expected of doctors – para 42

Panel Development Team

0161 240 7292

PanelDevelopmentTeam@mpts-uk.org